

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK) Case No.: 2015-CP-46-01409

Hugh Dereede and Tyre Dealer Network)
Consultants, Inc.)

Plaintiffs,)

v.)

Courtney Feeley-Karp, Individually and)
as Trustee of the Deborah Dereede Living)
Trust Dated December 18, 2013 and)
Michael Fehily, as a qualified beneficiary)
of the Deborah Dereede Living Trust)
Dated December 18, 2013,)

Defendants.)

ORDER FOR ATTORNEY'S FEES

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SC Court of Appeals

This matter came before me on September 21, 2016, upon Plaintiffs' petition for attorney's fees and costs pursuant to S.C. Code Ann. § 62-7-1004 (1976, as amended). Plaintiffs filed an Affidavit of Attorney's Fees and Costs on June 21, 2016, and Defendants filed a Return to Affidavit of Attorney's Fees and Costs ("Return") on July 5, 2016. Plaintiffs filed a Supplemental Affidavit of Attorney's Fees on July 14, 2016 ("Supplemental Affidavit"), and an updated Affidavit of Attorney's Fees on September 29, 2016. Defendants filed a Return to Updated Affidavit of Attorney's Fees and Costs on October 10, 2016.

By previous Order dated June 9, 2016 ("Order"), I made specific finding of fact and conclusions of law supporting the Plaintiffs' claims in this action, which are incorporated by reference herein. I previously found that an award of attorney's fees and costs in this case was appropriate "as justice and equity may require", as set forth in S.C. Code Ann. § 62-7-1004 (1976, as amended). In this case, Plaintiffs are "the prevailing party" with regard to the claims asserted herein.

Based upon the Trustee's refusal to make distributions in accordance with the terms of the Trust, I find that justice and equity require the assessment of fees and costs against her. While I did not find that the Trustee acted in bad faith, I found and concluded that she had violated her fiduciary duties to Plaintiffs, and that probable cause existed for the bringing of this action against her. By order dated September 13, 2016, I declined to reconsider the findings of

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fact and conclusions of law in the Order (“Order on Motion for Reconsideration”).

In support of their application for an award of attorney’s fees, Plaintiffs have submitted affidavits detailing fees and costs incurred by Plaintiffs in prosecuting this matter, and an updated statement of fees incurred has been provided to the Court. Those affidavits reflect fees totaling \$42,232.00 incurred by Plaintiffs through July 11, 2016, and an additional \$4,582.50 incurred since July 11, 2016, for a total of \$46,814.50. Plaintiffs also incurred costs of \$21,129.89, including expert witness fees, incurred prior to and at trial, totaling \$17,400.00.

There are six factors the court must consider in determining an award of attorney’s fees: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). Each factor is addressed separately as follows.

Nature, extent and difficulty of legal services.

This case arose in the context of a dispute between beneficiaries of the Deborah Dereede Revocable Living Trust dated December 18, 2013 (“Trust”), which became irrevocable upon the death of the Settlor, Deborah Dereede (“Settlor”). The primary asset of the Trust was real property located at 131 Whispering Pines Drive, Lake Wylie, South Carolina (the “Property”), which was purchased by the Settlor with the assistance of funds loaned by Tyre Dealer Network Consultants, Inc. (“TDN”), a company owned wholly by Hugh Dereede (“Dereede”). The Trust provided that as soon as practicable after the Settlor’s death, the Property shall be sold, with the proceeds “. . . used first to pay off any mortgage against the property, and second to pay off that certain promissory note given by me to Tyre Dealer Network Consultants, Inc.” One half of the remaining net sales proceeds were then directed to be paid to Dereede outright, and free of trust. The Settlor died on August 15, 2014, and the Property was sold in December of 2014.

As set forth in my previous Order, upon the sale of the Property, the plain language of the Trust required repayment of the promissory note to TDN, and immediate distribution of one-half of the net sales proceeds to Dereede, before all other payments or distributions under the Trust.

This case has been characterized by numerous pretrial and post-trial motions, objections and hearings. It has required the application of the South Carolina Probate Code and case law from this and other jurisdictions. It has also involved issues arising from the appointment of a trust protector.

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The trial of this case required the preparation and presentation of extensive testimony and examination of two expert witnesses, and the examination of the Trustee, who is a practicing attorney licensed in another state.

In light of these factors, I find and conclude that the nature, extent and difficulty of legal services provided are reasonable and justify the award herein.

Time and Labor Devoted to the Case.

Plaintiffs' Counsel conducted extensive factual investigation, legal research, and responded to numerous motions filed by the Trustee, and preparation of the case for mediation and trial. Plaintiffs' counsel estimates more than 186 hours of time were devoted to this case through April, 2016, and additional time has been incurred since then as set forth in the invoices attached to the affidavits submitted herein. Since the Order was issued, the Trustee filed a Motion for Reconsideration and Amended Motion, which required extensive review of the trial transcript and motions in the case, and a separate hearing. I find and conclude that the time and labor devoted to this case reflected by the affidavits submitted by counsel is reasonable and fair.

Additionally, the amount in dispute, and the fact that the Trustee asserted the forfeiture provisions of the Trust to nullify any entitlement of Plaintiffs, made this case particularly difficult, and warranted the attorney time expended.

Professional Standing of Counsel.

Plaintiffs' Counsel is an experienced and competent attorney. His practice involves a substantial of probate work, and I have found him to be very knowledgeable in the case law involving probate matters, and the Probate Code in particular. He and his firm are well-respected in the community, and frequently appear before this court.

Contingency of Compensation.

Plaintiffs' Counsel was paid an hourly fee for his services. Payment was not contingent on the success of this motion or the outcome of the case.

Fees Customarily Charged for Similar Services.

Plaintiffs' Counsel charged his clients a rate of \$250 per hour. Counsel's hourly charges are commensurate with those charged by similarly-experienced attorneys in this geographic area, and in this area of practice.

Beneficial Results Obtained.

Counsel's efforts resulted in the Order requiring payment of proceeds in accordance with the terms of the Trust, which had been refused by the Trustee since the sale of the Property.

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There is no question that Counsel's efforts obtained a beneficial result for his clients, satisfying this factor in the award of fees and costs.

Defendants' objection to award.

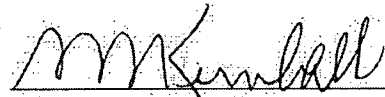
In her Returns, the Trustee opposed and objected to the award of any attorney's fees or costs, asserting that they were not awardable at all. The Trustee did not oppose any particular entry of charges in the Affidavits, or the amount sought by Plaintiffs. Moreover, the Trustee does not dispute the reasonableness of the fees sought, the standing of counsel or the suggested analysis of the fees charged. The legal grounds asserted by the Trustee in opposition to the award of fees at all are resolved in my prior Order, which is incorporated herein by reference.

Finally, prior to the July 14, 2016 Supplemental Affidavit, the Trustee objected to the filing of an amended affidavit setting forth additional facts and circumstances in support of the Plaintiffs' petition. I find no basis for excluding of the affidavit filed herein, and therefore overrule that objection.

In summary, I have considered each of the relevant factors, and find that an award of attorney's fees of \$46,814.50 and costs of \$21,129.89 is reasonable under the facts of this case. Therefore, based upon the findings and conclusions herein, it is ordered that Plaintiffs are entitled to recover from the Trustee attorney's fees in the amount of \$46,814.50, and costs of \$21,129.89.

AND IT IS SO ORDERED.

November 4, 2016



S. Jackson Kimball, III
Special Circuit Court Judge
York County

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